defendant contended that the plaintiff was only the owner of the land but not of the houses, the houses in questions were part of the land in which they stood and were thus the property of the proprietor of the land. The conclusion I have arrived at in the present appeal appears to me to be entirely in accordance with that decision.

The other case is *Hiew Kim Swee v. G. C. Gomez*[6] which deals with the other point raised before me as to what is a *bona fide* question of title. Here again the opinion I have expressed in this judgment appears to be entirely in accordance with the decision of Thomson J.

Had it been possible, therefore, for these two cases to be cited before me I should have followed them and I should have reached the same conclusions. I would only add, in view of the fact that *Hiew Kim Swee's*[6] *case* dealt with a Magistrate's jurisdiction, that in my view section 71 of the Courts Ordinance, which deals generally with any action or suit before a Sessions Court, does not affect the construction which has been placed by Thomson J. on sub-section (4) of section 70.

The appeal is, therefore, dismissed with costs.

Appeal dismissed.

Solicitors: *Lim, Lim & Oon; Presgrave & Matthews.*

SUPRAMANIAM v. KANTHASAMY

[A.Cr.J. (Spenser Wilkinson J.) October 15, 1955]

[Penang — Criminal Appeal No. 39 of 1955]

Criminal trial — Plea of guilty — Necessity of recording statement of facts.

In this case the appellant pleaded guilty on a charge of voluntarily causing hurt under s. 323 of the Penal Code. No statement of the facts were called for or recorded.

Held: the Courts have frequently laid down that upon a plea of guilty the Magistrate must either take evidence or a statement of the facts and record them and as this was not done in this case the conviction must be quashed.

MAGISTRATE'S CRIMINAL APPEAL.

Jag-Jit Singh for the appellant.

D. C. Jackson (Sr. Federal Counsel) for the respondent.

Spenser Wilkinson J. : — The appellant in this case was charged with voluntarily causing hurt to the respondent under section 323 of the Penal Code.

Upon his first appearance before the Magistrate's Court he claimed trial but upon a subsequent appearance he pleaded guilty.

The learned Magistrate recorded the plea and convicted him thereon. No statement of the facts, however, was called for or recorded and the appellant alleges that had the facts been outlined it would have been apparent that he did not intend to plead guilty to the charge.

The Courts have very frequently laid down that upon a plea of guilty the Magistrate must either take evidence or a statement of the facts and record them. As this had not been done in this case I quashed the conviction and remitted the case to the Magistrate for retrial.

Retrial ordered.

PAPATHY v. PUBLIC PROSECUTOR

[C.A. (Mathew C.J., Spenser Wilkinson and Hill JJ.) October 12, 1955]

[Ipoh — F.M. Criminal Reference No. 2 of 1955]

Criminal Procedure — Joint trial of cross-summonses — Whether this is an illegality or irregularity — Criminal Procedure Code (Cap. 6), ss. 170 & 422 — Courts Ordinance, 1948, s. 34.

This was a criminal reference under s. 34 of the Courts Ordinance, 1948, on a certificate of the Public Prosecutor. The point raised for determination was whether the joint trial of cross-summonses is an illegality or an irregularity.

The procedure adopted by the learned Magistrate was to hear one of the two cases, i.e. PP. 2080/53 first. The complainant and his witnesses gave evidence and they were cross-examined by Counsel for the defence. At the close of the case for the prosecution the learned Magistrate made the following note — "Complainant in PP. 7/54 to state her case and answer the charge". The two complainants in that case and one of the defence witnesses were then examined and cross-examined by Counsel for the complainant in case PP.2080/53. The learned Magistrate then found the present appellants who were the accused in case PP.2080/53 guilty.

Held: the procedure followed by the Magistrate was not in accordance with the provisions of the Criminal Procedure Code and therefore the trial was bad and cannot be cured by recourse to s. 422 of the Code.

Cases referred to :—

(1) *Pulukuri Kotayya v. King-Emperor* 21 I.A. 65.

(2) *Dhako Singh v. Emperor* A.I.R. 1920 Patna 177.

(3) *Queen v. Sheikh Bazu* (1867) 8 W.R. 47.

(4) *Sahadev Ahir v. King-Emperor* 8 C.W.N. 344.